

PATENT
MES/002 CON**REMARKS****I. Petition Under 37 C.F.R. § 1.136(a)**

Pursuant to 37 C.F.R. § 1.136(a), applicant hereby petitions for a three-month extension of the shortened statutory period set for reply to the Office Action dated October 6, 2005. Payment in the amount of \$510.00 of the fee set forth in 37 C.F.R. § 1.17(a)(3) may be charged to the credit card set forth in the enclosed credit card payment form.

II. Introduction

Claim 1 is cancelled without prejudice.

Claims 2-82 are pending in the application.

Claims 2-82 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gerszberg et al., U.S. patent 6,385,305 (hereinafter "Gerszberg").

Consideration and allowance of this application in light of the amendments above and the following remarks is respectfully requested.

PATENT
MES/002 CON

IV. Applicant's Reply to the
Rejection Under 35 U.S.C. § 102(b)

Claims 2-82 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gerszberg. Applicant respectfully traverses in view of the following remarks.

One aspect of applicant's claimed invention is concerned with a wireless telephone, such as a cellular telephone, that may be customized by programming a video file into the wireless telephone for use as an indicia of an incoming communication. This may be thought of as a wireless telephone that allows a user to customize the wireless telephone by selecting and programming video into the wireless telephone that plays when a telephone call (or other communication) is incoming to the wireless telephone. Thus, when a communication is incident to the wireless telephone, the user of the wireless telephone may see and/or hear the selected video playing and may be thus alerted to the incoming communication.

The claimed wireless telephone has the ability, among other things, to connect to a remote database(s) of video and allow the user to browse lists of video files in the remote database(s), select a particular video file and optionally review a selected video using a speaker and processing circuitry prior to downloading the video file

PATENT
MES/002 CON

into a programmable memory in the wireless telephone (e.g., a preview feature). This allows the user to confirm the selected video is correct and/or acceptable or meets expectations, etc. Thus, one aspect of applicant's claimed invention is concerned with a customization of wireless telephone by allowing the review and selection of a video file that is played subsequently when receiving an incoming call.

In contrast, Gerszberg fails to show or suggest these features anywhere. Rather, Gerszberg is merely concerned with a toolkit for providing multimedia greeting or "announcement" messages for automated telephone answering machines (see Gerszberg, Abstract, column 1, lines 5-8, column 2, lines 3-6 and 54-59, column 8, lines 1-15, the claims, etc.). The greeting messages and answering machine described in Gerszberg are of a conventional type wherein the greeting message is played after a caller fails to reach a called party. When the called party is not reached, the caller hears and/or sees the greeting and may confirm the correct party was called and in certain instances, may be provided with the opportunity to leave a message for the called party on the answering machine (see Gerszberg, FIGS. 6-9, 13 and associated description).

PATENT
MES/002 CON

Thus, in the answering machine of Gerzsberg, greeting messages are played during an automated answering sequence which begins after a call has failed to reach the intended party rather than as an indicia of an incoming call (e.g., prior to the call being answered) as specified in applicant's claims. For example, in Gerzsberg, the answering sequence will not play if the called party answers the incoming call prior to the exceeding the triggering interval of the answering machine. In contrast, in applicant's claimed invention, the selected video plays when the call is inbound, prior to receipt, to the alert the wireless telephone user of the incoming call. This is not shown or suggested by Gerszberg.

Furthermore, the greetings described in Gerszberg are sent to and played on the remote video phone for the benefit of the *calling party* and not the video phone to which the selected video has been downloaded as further specified in applicant's claims (see, e.g., Gerzberg, column 9, lines 55-60, column 10, lines 15-32, column 11, lines 58-66 etc.). Accordingly, applicant respectfully submits that claims 2-82 are allowable over Gerzsberg.

Moreover, applicant respectfully points out that Gerszberg fails to show or suggest a wireless telephone capable of performing the features as specified in the

PATENT
MES/002 CON

instant claims. For example, FIGS. 1 and 2 of Gerzsberg show a complicated hardwired communications network, a portion of which includes video phone 130 (column 3, lines 29-53). FIG. 2 shows video phone 130 connected only by hardwired communications links (Ethernet link 119 and IEEE 1394 firewire link 112). Gerszberg explains that the hardwired video phone may include a corded or wireless handset 144 for audio communication (see column 6, lines 25-30 and FIG. 3A, reference number 144). However, handset 144 is merely a part of video phone 130 and incapable of performing any video function including those specified in applicant's claims. Nowhere in Gerzsberg is a wireless phone with video capabilities shown or suggested.

Other Patentable Distinctions

In addition to the reasons above, applicant respectfully submits that at least several other patentable distinctions exist in the additional pending dependent claims including means to prevent the unauthorized distribution of the downloaded video files used as an indicia of an incoming communication, optionally modifying selected video files before programming into the wireless telephone the use of polyphonic audio files and video files including the various formats specified as well as other

PATENT
MES/002 CON

patentable features set forth in the claims that are not deemed necessary to discuss here.

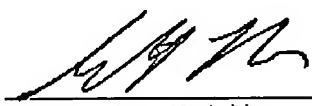
Accordingly, based on the above, applicant respectfully requests that the rejections under 35 U.S.C. § 102(b) be withdrawn.

VI. Conclusion

For at least the above reasons, claims 2-82 are patentable over the references of record. Thus, applicant respectfully requests that the Examiner withdraw the rejections and allow the pending claims. To expedite prosecution of this application to allowance, the examiner is invited to call the applicant's undersigned representative to discuss any issues relating to this application.

Respectfully submitted,

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Scott H. Kaliko
Attorney for Applicant
Registration No. 45,786
KALIKO & YEAGER, L.L.C.
500 North Franklin Turnpike
Ramsey, NJ 07446
Direct: 201-831-0575
Fax: 201-831-0519